

Written Testimony Submitted

**By
MichBio**

**The Michigan Senate Judiciary Committee Hearing on Abusive Practices by Patent Assertion
Entities (PAEs)**

May 12, 2015

MichBio appreciates this opportunity to provide the Michigan Senate Judiciary Committee with testimony concerning legal issues involving patent litigation brought on by "patent assertion entities" or PAEs. MichBio is the state's only trade association representing the biosciences industry. Our member companies seek to develop and manufacture sustainable, bio-based food, energy and industrial products, as well as life-changing medical devices, diagnostics and medicines for the global consumption.

MichBio commends the Michigan Senate Judiciary Committee for calling today's hearing as we believe that meritless and bad-faith patent assertions are an abusive practice that harms legitimate businesses and consumers. However, there are important issues to consider as Michigan policymakers delve deeper into this issue. While addressing this abusive practice from a state-level is well-intended, a number of unintended consequences should be considered before enactment of any legislation.

First, legitimate enterprises must maintain the ability to lawfully enforce their patents to protect intellectual property. This is of critical importance to innovation-focused industries like the biosciences, which is why any legislative proposal must discern between abusive patent enforcement practices and legitimate patent enforcement practices and contain provisions that require certain factors to be considered prior to determining a patent enforcement action is in bad-faith and therefore unlawful. The majority of MichBio members companies are small to medium sized companies, and in many cases had university-based origins, that currently do not yet have a product on the market. These companies must wait on average between twelve to fifteen years and invest hundreds of millions of dollars to bring a life-saving drug to market. The strength of their patent protection and their ability to enforce those patents remains a key asset in securing the financing required to sustain this level of innovation. Academic research institutions are at risk too as their technology licenses need protection so that new companies can be safely formed and funding secured. Legislation that views legitimate research-based technologies or companies without a product on the market the same as a PAE could be detrimental to biotech innovation and erode the bioscience innovation already taking place in Michigan.

Second, patent law falls under the purview of the federal government and state laws that penalize patent enforcement are likely to interfere with federal patent law. The innovative spirit in United States is due in large part to the appreciation our founding fathers had for

protecting intellectual property. Those protections, which are enshrined in the United States Constitution, serve as the basis for a national framework to enforce patents and ensure that all enterprises are held to a national standard. Having a patchwork of states laws, in addition to federal law, will lead to confusion and ultimately hamper commerce between states.

States should not erect barriers for legitimate companies to protect their patents and defend their businesses against patent infringement. In normal commercial practice, the vast majority of such disputes are resolved without resort to litigation, in the form of letters, meetings, offers and counteroffers, and other communications that could be penalized under the provisions of many of these bills.

States already have consumer protection and deceptive trade practices acts that give authorities the power to investigate and curb misleading business activities, including the deceptive assertion of patent rights. Likewise, state law already provides private causes of action for businesses and individuals who have been targeted by bad faith and misleading activities.

Congress is attempting to address the patent troll issue from a national perspective. Such legislation is under active consideration by both the US House and Senate and is likely to move this session.

To end, MichBio respectfully requests the Michigan Senate Judiciary Committee to carefully consider any legislative proposals intending to address the PAE problem and seek input from a wide variety of legitimate businesses that require strong and enforceable patents to succeed.

Thank you.

Stephen Rapundalo, Ph.D.

President and CEO

MichBio

srapundalo@michbio.org